United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 17-0634**
	)	**Issued: July 24, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Federal Way, WA, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 30, 2017 appellant, through counsel, filed a timely appeal from a September 2, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 31, 2015, as she no longer had residuals

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

or disability due to her accepted left knee injury; (2) whether appellant has met her burden of proof to establish continuing disability or residuals after March 31, 2015, causally related to the accepted employment injury; and (3) whether appellant has established that her claim should be expanded to include the additional condition of left hip labral tear.

FACTUAL HISTORY

On February 13, 2012 appellant, then a 50-year-old part-time flexible (PTF) city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on January 18 and 20, 2012, she twice strained her left knee when she slipped on snow and ice at work. She did not stop work.

OWCP converted appellant's claim to an occupational disease claim because her injury occurred during more than one workshift. It accepted her claim for left knee chondromalacia, except patella.

In an August 14, 2012 report, Dr. Antony S. Egnal, a Board-certified family practitioner, related that in January 2012 appellant had twisted her left knee at work and continued to experience pain and tenderness. He diagnosed left knee chondromalacia patella. Dr. Egnal recommended physical therapy and light-duty work. He provided a duty status report (Form CA-17) with appellant's restrictions.

On August 16, 2012 appellant accepted a limited-duty job assignment as a PTF city carrier working four hours a day. OWCP paid medical benefits wage-loss compensation for partial disability from November 3, 2012 to May 17, 2013 on the supplemental rolls.

On July 17, 2013 appellant returned to full-duty work.

Dr. Egnal continued to treat appellant. In a September 10, 2013 report, he related her chief complaint of ongoing issues and pain in her left hip. Dr. Egnal reviewed appellant's history and conducted an examination. He reported no redness or swelling, or point tenderness of her left hip. Range of motion was full in all directions without difficulty. Dr. Egnal indicated that examination of appellant's lumbosacral spine showed abnormalities in the left lower back and sacroiliac (SI) joint area and tenderness on palpation of the left side. He diagnosed lumbago and ongoing back/hip pain.

Appellant underwent a left hip x-ray examination by Dr. Andrew D. Bronstein, a Board-certified diagnostic radiologist, who indicated in an October 8, 2013 report that appellant had minimal marginal osteophyte formation at the superolateral acetabulum, bony convexity to the anterior aspect of the femoral head neck junction, and enthesopathic spur at the greater trochanter distally. Dr. Bronstein diagnosed bilateral hip mild degenerative joint disease.

In a July 1, 2014 report, Dr. Egnal indicated that he was treating appellant for follow up of left knee and left hip pain. He reported "somehow hip was n[o]t included in original claim -- but is all related." Upon physical examination of appellant's left knee, Dr. Egnal reported medial left joint pain, accompanied by a popping sound, and knee joint swelling and stiffness. Examination of appellant's left hip revealed no redness, swelling, or point tenderness. Dr. Egnal noted some pain on range of motion. He diagnosed disorder of the pelvis, hip joint, and femur. Dr. Egnal recommended a modified work schedule.

OWCP referred appellant to Dr. Aleksandar Curcin, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether she continued to suffer residuals and remained disabled from work due to her left knee employment injury. In an August 19, 2014 report, Dr. Curcin described appellant's January 2012 work-related left knee injury and reviewed appellant's prior medical treatment. He provided physical examination findings and indicated that appellant's accepted condition of "chiropractor" had not resolved and was never expected to resolve. Dr. Curcin reported that appellant was capable of working full-time duty. He further opined that there were no other conditions identified as related according to the statement of accepted facts (SOAF). Dr. Curcin completed a work capacity evaluation form, which indicated that appellant was capable of performing her usual job full time.

In a September 3, 2014 report, Dr. Curcin explained that there was an inadvertent typographical error in his August 15, 2014 report. He noted the correction: "The accepted condition of chondromalacia has not resolved and is expected never to resolve."

By letter dated September 17, 2014 to Dr. Curcin, OWCP requested that he clarify the issue of whether appellant's left hip joint arthritis, pelvic disorder, left S1 joint dysfunction or IT band pain were causally related to her employment injury.

Dr. Curcin provided an October 3, 2014 report where he indicated that he reviewed Dr. Egnal's report, which noted appellant's complaints related to her hip, IT band, and low back. He related that it did not make anatomic or physiologic sense to imply that these conditions had all metastasized from appellant's accepted knee injury. Dr. Curcin noted that there were no objective diagnostic imaging studies which confirmed any significant structural pathology in any of these additional body parts.

OWCP referred appellant to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for another second opinion examination. It requested that Dr. Dinenberg describe any physical limitations resulting from the work-related injury "as well as any restrictions that may be attributable to any preexisting conditions." OWCP also requested that he address whether the accepted condition of chondromalacia had resolved; whether appellant was capable of performing her duties on a full-time basis; whether there were other conditions causally related to factors of her federal employment; and, if so, whether "the diagnosed condition [is] medically connected to the factors of employment … either by direct cause, aggravation, precipitation, consequential[,] or acceleration?"

In an October 8, 2014 report, Dr. Dinenberg indicated that appellant sustained a left knee injury on January 18 and 20, 2012 in the performance of her duties as a letter carrier. He noted that her claim was accepted for left knee chondromalacia. Dr. Dinenberg reviewed appellant's history, including her prior medical treatment. He noted appellant's current complaints of pain in her left hip outside of groin and joint area and occasional pain in her left lower back and SI joint.

Upon physical examination, Dr. Dinenberg reported that appellant ambulated well with a nonantalgic gait. He related her examination findings. Dr. Dinenberg diagnosed left knee degenerative joint disease/chondromalacia preexisting that was "on a more probable than not basis, but temporarily aggravated by work injury of January 18, 2012, on a more probable than not basis, now resolved;" preexisting degenerative joint disease of the left hip that was "on a more probable

than not basis, temporally not related to work injury by review of medical records," and right-sided thoracic pain, "temporally not related to work injury of January 18, 2012 work injury, as the claimant states that this pain came on after a change in jobs in April 2014."

Dr. Dinenberg opined that appellant had no physical limitations resulting from the work-related injury. He reported that her work-related injury was the temporary aggravation of chondromalacia/degenerative joint disease of the left knee, which had resolved. Dr. Dinenberg explained that the chondromalacia was a permanent condition of the knee, which preexisted the work injury, but made symptomatic by the work injury. He noted that the chondromalacia was at maximum medical improvement. Dr. Dinenberg further opined that appellant's other conditions were not causally related to her January 2012 employment injury "on a more probable than not basis." He explained that she appeared to have some preexisting degenerative joint disease of the right hip, but noted that this condition came up approximately a year after the original injury and, thus, "does not appear to be temporally related to the work injury of January 2012."

Dr. Dinenberg further explained that after reviewing the SOAF and appellant's description of her job duties, "certainly getting in and out of a mail truck multiple times in a day and carrying loads up to 70 pounds could aggravate a degenerative joint disease of the left hip." He indicated that he would restrict her to an eight-hour workday due to her nonwork-related conditions, but regarding appellant's accepted condition of chondromalacia, appellant was capable of working full-time full duty. Dr. Dinenberg included a work capacity evaluation form, which indicated that appellant was capable of working her usual job per her accepted left knee condition.

By letter dated December 2, 2014, appellant requested that OWCP make a determination as to whether her hip condition was causally related to the employment injury of January 2012. She noted that she wanted to get it cleared up as soon as possible because she needed some medical treatment that required preauthorization by OWCP. Appellant explained that she was working with a lot of pain and could no longer continue working like this.

According to a January 20, 2015 OWCP memorandum, a senior claims examiner, reported that since Dr. Curcin offered a medical opinion on appellant's left hip condition that was not based on examination, his opinion on this matter was diminished in value and would be excluded as medical evidence in the claim.

OWCP proposed to terminate appellant's wage-loss compensation and medical benefits on January 28, 2015. It found that the weight of evidence rested with the opinion of the second opinion examiner, Dr. Dinenberg, who determined in his October 8, 2014 report that there were no objective findings to demonstrate that appellant continued to suffer residuals of her work-related left knee injury. Appellant was advised by OWCP that she had 30 days to submit additional evidence or argument if she disagreed with the decision.

Appellant submitted personal statements dated February 4, 6, 7, 17, and 19, 2015 and March 23, 2015. She noted her objections to the proposed termination of her wage-loss compensation and medical benefits. Appellant alleged that Dr. Dinenberg's October 8, 2014 report was solely based on an educated guess that she had left hip joint arthritis even though there was no diagnostic testing to show that she had a preexisting left hip condition. She noted that the hip issue was a consequential injury of the accepted knee injury. Appellant asserted that a

magnetic resonance imaging (MRI) scan showed that she did not have left hip arthritis, but had a torn labrum and hip impingement that required surgery. She noted that she underwent arthroscopic surgery on January 30, 2015 to repair the torn labrum and hip impingement and indicated that photographs were taken during the surgery, which showed that she had a labral tear, not arthritis of the left hip. Appellant attached these photographs with her statement.

Appellant further disagreed with OWCP's assertion that she could not add a new diagnosis a year after her injury and noted that OWCP took 6 months to accept her claim and 10 months to authorize physical therapy. She noted that she was attaching a December 3, 2012 physical therapist evaluation form, which showed that she had hip pain along with left knee pain at the time of the January 2012 employment injury. Appellant indicated that OWCP had advised her to file a new Form CA-2 for a left hip occupational injury, but she believed it would mean more delays in her health care.

Appellant provided a December 3, 2012 physical therapy report, which noted that she presented with left knee and hip pain that occurred since slipping and falling at work in January 2012. Examination showed bruising of the medial knee, pain with palpation over the left glute, medial hamstring, and IT band. The physical therapist opined that symptoms were consistent with chondromalacia, glute med and medial hamstring tendinitis, and a rectus femoris strain.

Appellant also provided a November 3, 2014 left hip "MR" arthrogram by Dr. Mark A. Skirgaudas, a Board-certified radiologist. Dr. Skirgaudas reported hypertrophic ridging at the head neck junction of the femur and elevated alpha angle compatible with amoroacetabular impingement, fraying and tearing of the anterior labrum with possible extension into the superior labrum, and tendinopathy at the insertion of the left gluteus medius and minimus tendons. A November 3, 2014 left hip "MR"/CT arthrogram report by Dr. Andrew D. Bronstein, a Board-certified radiologist, indicated that appellant received steroid injections.

In a February 13, 2015 letter, Dr. Egnal noted his disagreements with OWCP's proposal to terminate appellant's compensation. He indicated that he had treated her and her family for the past 20 years and noted that she had never had any hip or knee injuries, including any form of arthritis, until the January 2012 work injury. Dr. Egnal reported that he initially examined appellant on February 6, 2012 for complaints of left knee pain. He related that they tried for months to get her physical therapy, but OWCP delayed the whole process. Dr. Egnal explained that during this waiting period appellant continued to work in pain, which placed additional stress over time on her left knee, left leg, and left hip. He disagreed with Dr. Dinenberg's diagnosis that appellant had degenerative joint disease of the left hip and noted that Dr. Dinenberg did not provide any diagnostic studies which supported his statement. Dr. Egnal indicated that a November 3, 2014 "MR" arthrogram showed a significant labral tear in appellant's left hip. He also related that views of appellant's hip taken during her January 30, 2015 surgery showed no evidence of arthritis. Dr. Egnal concluded that appellant's accepted, initial injury caused her traumatic hip injury and that there was no preexisting condition or arthritis.

Appellant indicated in a February 19, 2015 statement that she was including a CT scan report of her left hip. She alleged that her left hip impingement issue was part of her left hip injury associated with the initial accepted knee injury.

In a November 26, 2014 left hip CT scan report, Dr. Ranjeet B. Singh, a Board-certified radiologist, noted appellant's complaints of left hip pain. She reported mild-to-moderate joint space narrowing with no convincing pathologic effusion and no calcific loose bodies.

By decision dated March 31, 2015, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits. It found that the weight of medical evidence rested with second opinion physician, Dr. Dinenberg, who determined in his October 8, 2014 report that appellant's work-related knee injury had ceased and that she could return to her date-of-injury position. OWCP determined that Dr. Egnal's February 13, 2015 report was of diminished probative value because he attributed appellant's current symptoms to a hip injury and not appellant's accepted knee injury.

On April 24, 2015 appellant requested a hearing before an OWCP hearing representative. By letter dated July 6, 2015, counsel requested that appellant's hearing request be converted to a telephone hearing.

Appellant submitted a Form CA-17 dated July 16, 2015 by a provider with an illegible signature. The provider noted that appellant was able to work with restrictions. Appellant also provided a position description for a city carrier. She submitted a prescription note which was illegible.

On July 15, 2015 a telephone hearing was held. During the hearing, appellant described her left knee injury and how long she had waited to obtain authorization for physical therapy. She stated that she reinjured her left leg at work on various occasions because she could not get the medical treatment she needed. Appellant noted that her left leg continued to hurt at work. She indicated that her left hip also bothered her and it was finally noted in a medical report during her first physical therapy appointment on December 3, 2012. Appellant reported that, after Dr. Egnal reviewed her first physical therapy evaluation, he wrote a letter with his opinion that appellant's left hip condition was related to her left knee employment injury. She again disagreed with Dr. Dinenberg's opinion that she had preexisting left hip arthritis and noted that various diagnostic test results and photographs showed that she had a torn labrum, not arthritis.

In an August 7, 2015 letter, Adam Shildmyer, a physical therapist, described that in January 2012 appellant developed left knee and hip pain that left her unable to perform her work duties. He opined that the January 2012 incidences at work contributed to appellant's eventual left hip labral tear. Mr. Shildmyer explained, that when appellant's left leg collapsed, it caused her femur to internally rotate on the tibia and rub up against the femoral condyle. He noted that the femur is also part of the hip, so when it internally rotates during a sudden twist or pivoting motion, the femoral head twists as well and can cause a minimally traumatic event at the anterior labrum. Mr. Shildmyer indicated that, due to appellant continuing to work and the delay in receiving physical therapy treatment, she began to compensate for her knee pain with altered hip mechanics. He concluded that, while her knee was injured initially, months of improper mechanics, impact with walking routes, and not receiving care would almost definitely cause further problems.

On Mr. Shildmyer's letter, Dr. Egnal included his signature with the following handwritten statement: "I have read this letter and fully agree with its content regarding my patient."

Appellant provided a July 23, 2015 report by Dr. Tyler Nathe, a Board-certified orthopedic surgeon, who indicated that appellant originally injured her knee and hip two years ago. He opined on a more probable than not basis that appellant's "original workplace injury, where she sustained a fall in the snow in 2012, twisted her knee, and flexed and rotated her hip, contributed to or exacerbated her hip labral tear." Dr. Nathe explained that appellant was not able to get a diagnosis of her left hip during the first year after her injury because she was undergoing conservative treatment and her physicians did not obtain an MRI scan of her left hip.

In a September 16, 2015 letter, counsel indicated that he was enclosing chart notes from Drs. Egnal, Nathe, and Hulst, a summary of appellant's case file, and a memorandum with arguments supporting appellant's objection to termination of compensation. He requested that OWCP accept her left hip injury as a consequential injury based on the medical conclusions of her treating physician, Dr. Egnal, and surgeon, Dr. Nathe.

By decision dated September 17, 2015, an OWCP hearing representative affirmed the March 31, 2015 termination decision. He found that the weight of medical evidence rested with the second opinion physician, Dr. Dinenberg, who determined in his October 8, 2014 report that appellant's work-related left knee injury had ceased and that she could return to her date-of-injury position.

In a September 18, 2015 statement, appellant indicated that she was submitting an expert medical opinion from Dr. Nathe. She resubmitted Dr. Nathe's July 23, 2015 report and Dr. Curcin's September 3, 2014 second opinion report. Appellant also provided a timeline of her knee injury and the medical treatment she received.

Counsel also provided a September 16, 2015 memorandum regarding the issue of appellant's consequential left hip injury. He asserted that OWCP erred when it denied appellant's claim for a left hip injury based on the fact that she did not list a left hip condition on the initial injury claim form. Counsel also alleged that Dr. Dinenberg's diagnosis of left hip arthritis was not based on any diagnostic or objective studies. He further noted that Dr. Dinenberg's opinion of a "more probable than not basis" was sufficient to establish appellant's left hip consequential injury under FECA. Counsel further asserted that OWCP used leading questions to obtain the desired medical response from Dr. Dinenberg. He requested that OWCP's termination decision be vacated and that appellant's left hip labral tear be accepted as a consequential injury.

On March 17, 2016 appellant, through counsel, requested reconsideration. Counsel provided a timeline of appellant's claim and legal standards for a consequential injury and the standard of review on reconsideration. He alleged that OWCP committed a procedural error because Dr. Dinenberg did not have an opportunity to review Dr. Egnal's February 24, 2015 report and the November 3, 2014 "MR" arthrogram report, which appellant submitted after the notice of proposed termination. Counsel also asserted that the March 31, 2015 OWCP decision only focused on appellant's accepted left knee condition and did not discuss appellant's consequential left hip injury. He further alleged that OWCP's claims examiner performed a medical advisory function, rather than an adjudicatory function in rejecting the reports of appellant's treating physicians. Counsel resubmitted Dr. Bronstein's November 3, 2014 left hip "MR" arthrogram injection and steroid injection report.

On June 15, 2016 OWCP prepared a SOAF which again listed appellant's condition as left chonromalacia, except patella. It referred appellant's claim, along with the updated SOAF, to Dr. Steven P. Nadler, a Board-certified orthopedic surgeon, for another second opinion examination to determine whether she continued to suffer residuals and remained disabled from work due to her left knee employment injury and whether she had any additional conditions resulting from appellant's employment. In a July 1, 2016 report, Dr. Nadler provided a history of injury and reviewed appellant's medical records. He noted that an MRI scan showed a left hip labral tear and appellant underwent surgery on January 30, 2015. Dr. Nadler related that appellant presently complained of an aching pain in the outside of her left hip.

Upon examination of appellant's lower extremities, Dr. Nadler reported well-healed scars in her left hip. He indicated that sensory functions and motor strength were intact. Range of motion of both hips was excellent. Dr. Nadler related that examination of appellant's left knee showed no pain, discomfort, or effusion. He noted some mild patellofemoral crepitus. Dr. Nadler reported full extension and 30 degrees of flexion. Examination of appellant's bilateral hips revealed full range of motion with no pain or discomfort. Dr. Nadler diagnosed probable temporary aggravation of preexisting degenerative changes, resolved chondromalacia of patellofemoral joint left knee. He also diagnosed labral tear of the left hip, on a more probable than not basis unrelated to the industrial injury of January 2012 and resolved thoracic contusion related to the January 2012 employment injury. Dr. Nadler opined that appellant did not have any residual symptoms regarding chondromalacia of the left knee. He explained that the chondromalacia was a "permanent condition of the knee, that I opine was preexisting the work injury, but made symptomatic by the work injury." Dr. Nadler reported that appellant could return to her regular activities as a mail carrier. He noted that, according to the SOAF, a left hip injury was not accepted, but he indicated that it "does appear that the claimant sustained a labral injury as a result of this fall and this has been treated appropriately." Dr. Nadler provided a work capacity evaluation form, which related that appellant was capable of returning to her date-of-injury position.

In a letter dated August 12, 2016, OWCP requested that Dr. Nadler explain the relationship between appellant's left hip labral tear injury and the January 2012 employment injury.

In an August 16, 2016 report, Dr. Nadler indicated that appellant's labral tear was not related to her fall at work. He explained that it was "a degenerative condition and not related to her injury at work."

By decision dated September 2, 2016, OWCP denied modification of its September 17, 2015 decision. It found that the weight of medical evidence rested with the reports of Drs. Dinenberg and Nadler, who found that appellant no longer had residuals of her accepted left knee condition and was capable of returning to her date-of-injury position. OWCP also determined that the medical evidence of record was insufficient to establish that appellant sustained an additional left hip condition as a result of her accepted left knee condition.

LEGAL PRECEDENT -- ISSUE 1

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.[3] OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[4] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[6] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[7]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained left knee chondromalacia, except patella, as a result of January 18 and 20, 2012 federal employment factors. By decision dated March 31, 2015, it terminated her wage-loss compensation and medical benefits effective that date based on the October 8, 2014 second opinion report of Dr. Dinenberg.

In an October 8, 2014 report, Dr. Dinenberg reviewed appellant's history, including the SOAF, and accurately described the January 18 and 20, 2012 work incidents. He noted appellant's current complaints of pain in her left hip outside of groin and joint area and occasional pain in her left lower back and sacroiliac joint. Upon physical examination of appellant's left knee, Dr. Dinenberg observed slight varus alignment and minimal medial joint line tenderness. He diagnosed preexisting left knee degenerative joint disease/chondromalacia that was "on a more probable than not basis but temporarily aggravated by work injury of January 18, 2012, on a more probable than not basis, now resolved." Dr. Dinenberg reported that appellant's work-related injury was a temporary aggravation of chondromalacia/ degenerative joint disease of the left knee, which had resolved. He opined that appellant had no physical limitations resulting from the work-related injury and could return to her regular duties. Based on this report, OWCP terminated appellant's wage-loss compensation and medical benefits effective March 31, 2015.

The Board finds, however, that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits because the questions it posed to Dr. Dinenberg were inconsistent with the accepted injury. In this regard, OWCP requested that Dr. Dinenberg describe any physical limitations attributable to the "work-related injury as well as

[3] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[4] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[5] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[6] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

[7] *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P., id.*

any restrictions that may be attributable to any preexisting conditions." It also inquired as to whether there were other conditions causally related to factors of her federal employment; and, if so, whether "the diagnosed condition [is] medically connected to the factors of employment … either by direct cause, aggravation, precipitation, consequential[,] or acceleration?" The Board notes that OWCP had accepted that appellant sustained left knee chondromalacia causally related to factors of her federal employment occurring in January 2012. In his October 8, 2016 report, however, Dr. Dinenberg related that appellant had preexisting left knee degenerative joint disease/ chondromalacia that was "on a more probable than not basis, but temporarily aggravated by work injury of January 18, 2012." He further explained that appellant sustained a work-related injury of "temporary aggravation of chondromalacia/degenerative joint disease of the left knee." Dr. Dinenberg determined that appellant's chondromalacia was a preexisting condition that was "on a more probable than not basis" temporarily aggravated by her employment and was now resolved.

The Board finds that due to the incorrect characterization of the accepted condition on the part of OWCP, Dr. Dinenberg did not properly address appellant's accepted left knee condition. It is well established that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of limited probative value.[8] Based on the questions posited by OWCP, Dr. Dinenberg determined that appellant's chondromalacia was not work related but was a preexisting condition which was temporarily aggravated. Further, he opined that appellant had a temporary aggravation of chondromalacia from the accepted injury, which had ceased.[9] As such, this report is of limited probative medical value.

The Board finds, therefore, that OWCP erred by terminating appellant's wage-loss compensation and medical benefits, effective March 31, 2015, based on the second opinion report of Dr. Dinenberg. The Board will reverse OWCP's decision terminating appellant's wage-loss compensation and medical benefits.[10]

LEGAL PRECEDENT -- ISSUE 3

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[11] To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit

[8] *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid,* 52 ECAB 382 (2001).

[9] *See N.C.*, Docket No. 15-1855 (issued June 3, 2016).

[10] Given the disposition of the first issue, the second issue regarding appellant's continuing disability or residuals is moot.

[11] *Jaja K. Asaramo,* 55 ECAB 200 (2004).

rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[12]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[13] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[14] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[16]

ANALYSIS -- ISSUE 3

OWCP accepted appellant's claim for left knee chondromalacia, except patella. Appellant's treating physicians, Drs. Egnal and Nathe later claimed that appellant sustained an additional left hip injury. Counsel requested that appellant's claim include a left hip labral tear condition. OWCP determined that the medical evidence of record was insufficient to establish an additional work-related condition.

The Board finds that this case is not in posture for a decision.

Appellant submitted numerous reports from Dr. Egnal dated August 14, 2012 to February 13, 2015 regarding her medical treatment for left knee, left leg, and left hip pain. In a September 10, 2013 report, Dr. Egnal diagnosed lumbago and ongoing back/hip pain. In a July 1, 2014 report, he indicated "somehow hip was n[o]t included in original claim -- but is all related." Upon physical examination of appellant's left hip, Dr. Egnal reported no redness, swelling, or point tenderness, but noted some pain on range of motion. In a February 13, 2015 letter, he further noted that a November 3, 2014 left knee "MR" arthrogram showed a significant labral tear and no arthritis. Dr. Egnal opined that appellant's left knee injury caused her traumatic hip injury. He

[12] *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[13] *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[14] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[15] *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[16] Larson, *The Law of Workers' Compensation* § 1300; *K.S.*, Docket No. 16-404 (issued April 11, 2016).

explained that while appellant waited for OWCP to approve her physical therapy treatment, she continued to work in pain, which placed additional stress on her left knee, left leg, and left hip.

Dr. Egnal also included his signature on an August 7, 2015 letter by Mr. Shildmyer, a physical therapist, and indicated that he agreed with Mr. Shildmyer's assessment. Mr. Shildmyer reported that due to appellant's delay in receiving physical therapy and continuing to work, she began to compensate for her knee pain with altered hip mechanics. He indicated that appellant developed many muscle strains throughout her lower extremity and that with the repeated micro trauma, there was good reason to believe that appellant's knee pain contributed to her left hip labral tear.

Likewise, in a July 23, 2015 report, Dr. Nathe related that appellant sustained an injury to her knee and hip approximately two years ago. He opined that appellant's "original workplace injury, where she sustained a fall in the snow in 2012, twisted her knee, and flexed and rotated her hip, contributed to or exacerbated her hip labral tear."

In his July 1, 2016 report, Dr. Nadler examined appellant's left hip and diagnosed labral tear of the left hip, on a more probable than not basis unrelated to the industrial injury of January 2012. He later provided an August 16, 2016 report which clarified that appellant's left hip labral tear was a degenerative condition unrelated to her work injury.

The Board finds that a conflict in the medical opinion evidence therefore exists between appellant's treating physicians, Drs. Egnal and Nathe, and OWCP's second opinion physician, Dr. Nadler, as to whether appellant's left hip condition is a consequence of the accepted left knee injury.

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[17] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[18] Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.[19]

Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's left hip condition is causally related to her accepted left knee employment injury. After this and such further development as it deems necessary, OWCP shall issue a *de novo* decision.

[17] 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[18] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[19] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits. The Board also finds that the case is not in posture for decision regarding whether appellant sustained an additional left hip condition causally related to her accepted left knee injury.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2016 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 24, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board